

BOARD OF APPEALS CASE NO. 5194

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BEFORE THE

APPLICANTS: Douglas & Laura Zielinski

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a dwelling
within the required 70 foot front yard setback;
4718 Mellow Road, White Hall**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/24/01 & 10/31/01

HEARING DATE: December 19, 2001

Record: 10/25/01 & 11/2/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Douglas Zielinski and Laura Zielinski, are requesting a variance, pursuant to Sections 267-34C, Table II, and 267-23A(2) of the Harford County Code, to allow a detached single family dwelling with less than the required 70 foot front yard setback in an Agricultural District.

The subject parcel is located at 4718 Mellow Road, Whitehall, Maryland in the Fifth Election District, and is more particularly identified on Tax Map 15, Grid 1F, Parcel 136. The parcel contains approximately 1.22 acres.

The Applicant, Douglas S. Zielinski, appeared, and testified that he and the Co-Applicant, Laura Zielinski, are the owners of the subject property. He stated that he is familiar with the Department of Planning and Zoning Staff Report and has no additions or corrections to that document. Mr. Zielinski described his property as a 1.22 acre pie-shaped lot, currently improved by a trailer with a front porch addition, a storage trailer, and an old log style building. The log building, and part of the storage trailer are partially located on the adjoining property.

The witness testified that he is presently living in the existing mobile home. The trailer would have to be removed in order to construct the proposed home within the building envelope. However, the Applicants need to remain in their home during the construction of their new dwelling because they have nowhere else to live. After the new dwelling is complete, the existing trailer will be removed.

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The witness described several photographs, identified as Attachment 8 to the Department of Planning and Zoning Staff Report. The top photograph shows the existing trailer currently occupied by the Applicants. The proposed home would be constructed in front of the mobile home, adjacent to Mellow Road. The second photograph is a view of Mellow Road, on the western side of the proposed dwelling. The third photograph shows the existing drive from Mellow Road to the subject property.

According to Mr. Zielinski, constructing the proposed home within the building envelope would necessitate the removal of approximately twelve large oak trees. In addition, the Applicants intend to build a log home, which, if constructed within the building area, would be located in an area of dense woods, thereby increasing the risk of insect damage to the wooden roof. Many of the potentially damaging trees are located on adjoining property belonging to the Campfire Boys and Girls. These trees could not be removed to ensure the safety of the proposed dwelling. In addition, if the house were located within the building envelope, it would have only a 20 foot back yard, leaving a very small area for Applicant's children to play, while maintaining privacy from the temporary camp residents.

Mr. Zielinski further testified that the building envelope is located at the highest point on his property. Building the proposed home in that location would require much more fill dirt, and would also necessitate extensive digging. He stated that although he has two approved percs, the home, if constructed within the building envelope, would be much further from the existing septic system. The water and sewer pipes, as well as the electric lines would therefore have to be doubled in length.

Finally, Mr. Zielinski testified that his property is located in the Madonna area. The proposed dwelling is a log structure which will be compatible with other property in the neighborhood. The witness does not believe that the requested variance will have any adverse impact on adjoining properties because the subject property is the last lot on a dead end road. He also testified that he has talked to all five of his closest neighbors, and none of them had any objection to the granting of the requested variance.

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The Department of Planning and Zoning recommended approval of the subject request in its Staff Report dated July 30, 2001, stating that the “[t]he subject property is unique in regards to topography and configuration.” The Staff Report described the topography of the lot as “rolling to steep,” and states that it “terraces up from the road to the rear of the lot.”

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Douglas Zielinski and Laura Zielinski, are requesting a variance, pursuant to Sections 267-34C, Table II, and 267-23A(2) of the Harford County Code, to allow a detached single family dwelling with less than the required 70 foot, (40 foot front yard setback plus 30 foot distance measured from the center line of the road, 36 foot average proposed) front yard setback in an Agricultural District.

Mellow Road does not have an established right-of-way line. Section 267-26C(4) of the Harford County Code provides that “[f]or the purpose of establishing a setback line on existing roads without established right-of-way lines, the setback shall be measured thirty (30) feet from the centerline.” Section 267-34C, Table II, of the Harford County Code, provides for a minimum 40-foot front yard depth.

The Harford County Code allows the granting of variances stating:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals established the following two-part test for determining whether a variance should be granted. First, it must be determined whether the property for which the variance is being requested is unique. In order for a lot to be unique, there must be a peculiar characteristic or unusual circumstance, relating only to the subject parcel, which causes the zoning ordinance to impact more severely on that property than on surrounding lots. If it is determined that the subject property is unique, the hearing examiner may proceed to the second prong of the test. The second prong involves determining whether strict enforcement of the zoning ordinance would result in practical difficulty or unreasonable hardship to the owner of the unique property. Cromwell v. Ward, 102 Md. App. 691, 721 (1995).

The Hearing Examiner finds that the subject property is unique. The property is a pie-shaped lot, with sloping topography, and a limited building envelope. There was no opposition testimony introduced to contradict these findings. Thus, the first element of the Cromwell test has been met.

It must next be decided whether denial of the requested variance would create practical difficulty, or an unreasonable hardship for the Applicant. The Hearing Examiner finds that such a denial would result in both practical difficulty and unreasonable hardship for the Applicants in this case. The Applicants are currently residing in an existing mobile home which is located within the building envelope. They need to continue residing in their present home until the construction of their new home is completed. The structure which the Applicants intend to build is a log house. Locating the dwelling further to the east, within the building envelope, would require the removal of approximately 12 large oak trees. In addition, placing a log structure in an area of dense woods would increase the risk of insect damage to the wooden roof. Finally, constructing the home further to the east would necessitate extensive grading, and require the water, sewer and electric lines to be doubled in length.

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Lastly, the Hearing Examiner finds that the granting of the requested variance will not have an adverse impact on, or be substantially detrimental to adjacent properties, nor will it materially impair the purpose of the Code or the public interest. The property is the last lot on a dead end road, and is located between a children's camp, and a former dumping ground. The Applicant testified that he had discussed his construction plans with all five of his closest neighbors, and none of them had expressed any objection to the granting of the requested variance.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed dwelling.
2. That the Applicant not encroach further into the required setback than the distance requested herein.

Date JANUARY 23, 2002

Rebecca A. Bryant
Zoning Hearing Examiner